

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

GAIL J. GALLOWAY,	:	
Plaintiff,	:	No. 1:CV-00-0649
	:	
v.	:	(Judge Rambo)
	:	
PENNSYLVANIA BOARD OF	:	Electronically Filed
PROBATION AND PAROLE, et al.	:	
Defendants,	:	

**REPLY BRIEF IN SUPPORT OF DEFENDANTS’
MOTION FOR SUMMARY JUDGMENT**

Plaintiff, Gail Galloway, has filed a document entitled: “Plaintiff’s Response to Defendants (sic) Answer,” which defense counsel interprets as Galloway’s brief in opposition to defendants’ motion for summary judgment. Galloway does not attempt to dispute any fact asserted by defendants in their filings. Rather, Galloway argues that he has a right to have his case decided by a jury because one of the defendants, former agent Charles Giornesto, has been unavailable to defense counsel and consequently has not been able to respond to Galloway’s discovery

requests. Galloway does not assert that he is unable to present facts by way of affidavit or otherwise that would support his opposition to defendants' motion.

Regardless of whether Giornesto responded to discovery about how he heard that Galloway's son was looking to purchase a .50 caliber weapon for his father and what Giornesto's motivation may have been to make such a claim, it would not be material to Galloway's sole remaining claim. As Smith has stated under penalty of perjury, while the information his supervisor passed on undoubtedly increased the likelihood he would ask Galloway about weapons on that day, Smith has asked this question of many other parolees under his supervision without specific information to cause him to ask it. Smith declaration, ¶ 7.

More importantly, Smith explains that the reason he arrested Galloway on June 1, 1998, was "because of the weapons [he] observed and confiscated and not for any other reason. Specifically, while the information that plaintiff's son was thinking about purchasing a gun for his father prompted [him] to ask plaintiff about weapons, it was not the reason [Smith] viewed plaintiff as a technical parole violator." Smith declaration, ¶ 14. Smith also states that the decision to arrest plaintiff on June 1, 1998, was his and his alone. He consulted no one before placing Galloway under arrest. Smith declaration, ¶ 15. Therefore, as Smith had probable cause to arrest plaintiff for constructive possession of the weapons as explained in defendants' principal brief and the absence of responses to

interrogatories by a defendant who was not involved in that decision is not material, the Court should enter judgment in favor of all defendants.

IV. Conclusion

WHEREFORE, the Court should enter judgment in favor of all remaining defendants and against plaintiff.

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Date: June 7, 2004

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CERTIFICATE OF SERVICE

I, Francis R. Filipi, Senior Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on this 7th day of June, 2004, I caused to be served a true and correct copy of the foregoing document titled Brief in Support of Defendants' Motion for Summary Judgment by depositing same in the United States Mail, first-class postage prepaid to the following:

Gail Galloway
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s/Francis R. Filipi
FRANCIS R. FILIPI
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